HOOI SEONG (THE BENEFICIARY OF HOOI TECK WENG, DECEASED)

v.

OOI PAY YEONG (THE LEGAL REPRESENTATIVE OF THE ESTATE OF OOI KOK TEONG, DECEASED)

HIGH COURT OF MALAYA, PENANG
TUAN VINCENT NG KIM KHOAY J
[CIVIL APPEAL NO. 12-89-93]
26 AUGUST 1995

TORT: *Fatal accident - Claim for bereavement under s. 7(3B) of the Civil Law Act 1956 - Whether necessary to prove deceased a minor and unmarried - Deceased 17 years old at time of death - Whether presumption that a person under age of 18 is unmarried applicable - Section 10 Law Reform (Marriage and Divorce) Act 1976.*

STATUTORY INTERPRETATION: *Section 7(3B)(b) Civil Law Act 1956 - "a minor and never married" - Whether to be read disjunctively.*

This was an appeal against the decision of the learned Sessions Court Judge who, in a fatal accident claim under ss. 7 and 7(3B) of the Civil Law Act 1956 (CLA), found the deceased 40% negligent and the defendant 60% negligent and disallowed the appellant's claim for bereavement on the ground that the deceased had not been proven to have been unmarried at the material time.

Counsel for the appellant submitted that it was not necessary to prove the deceased was unmarried as it could be presumed under s. 10 of the Law Reform (Marriage and Divorce) Act 1976 (Act 1976) that a minor of 17 years has never been married.

The issues were whether there was any necessity to prove the ingredients of s. 7(3B) of the CLA and whether the presumption under s. 10 of the Act 1976 was applicable.

Held:

[1] Section 10 of the Law Reform (Marriage and Divorce) Act 1976 cannot assist the appellant as it also implies that a male under 18 years and a female between 16 and 18 years could be married by a licence granted "by the Chief Minister under s. 21(2)".

[2] The word "and" interposed between the words "was minor" and "never married" in s. 7(3B)(b) should be read disjunctively, to mean that before a claim for bereavement by the parents can be allowed, two ingredients would need to be proved, namely, that the deceased is a minor and that he was never married. Only upon being satisfied as to the marital status of the deceased can the trial Court allow such a claim.

[Defendant 80% negligent, appeal on claim for bereavement dismissed].

Legislation referred to:
Civil Law Act 1956, s. 7, (3B), (3B)(b)
Law Reform (Marriage and Divorce) Act 1976, s. 10

For the appellant - Baldev Bhar; M/s. Syarikat Baldev Bhar
For the respondent - Khairuddin bin Alaudin; M/s. Bala Mahesan & Khairudin

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JUDGMENT

Vincent Ng Kim Khoay J:

This is an appeal against the whole of the decision of the Sessions Court Judge dated 27 August 1993 arising out of a claim under s. 7 and 7(3B) of the Civil Law Act, 1956. The appellant sues as the specified beneficiary of Hooi Teck Weng deceased, who at the
b time of the accident was 17 years old.

After hearing the case, the learned Sessions Court Judge found the deceased to be 40% negligent and the defendant 60% negligent and disallowed the claim for bereavement as it was never proven that the deceased was not married.

After hearing submissions from both learned Counsel, I allowed part of the appeal in
c that I found the defendant 80% negligent but refused to allow the appeal on bereavement under s. 7(3B). I now state my reasons for doing so.

Section 7(3B) Civil Law Act states as follows:

> A claim for damages for bereavement shall only be for the benefit:
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> (a) of the spouse of the person deceased; and
>
> d (b) where the person deceased was a **minor and never married**, of his parents.

It is not disputed that the deceased was a minor at the time of the accident.

Counsel for the respondent submitted that appellant must prove that the deceased was his child, was below the age of 18 years and also that he was never married.

e Counsel for appellant submitted it was not necessary to prove that the deceased was not married because it could be presumed by virtue of s. 10 of the Law Reform (Marriage and Divorce) Act 1976 that a minor of 17 years has never been married. Section 10 of this Act states that:

> Any marriage purported to be solemnized in Malaysia shall be void if at the date of the marriage either party is under the age of 18 years unless, for a female who has completed
> f her 16th year, the solemnization of such marriage was authorised by a license granted by the Chief Minister under s. 21(2).

I do not agree that this provision is of any assistance to the plaintiff, as it also implies that a male who is under 18 years of age and a female between 16 and 18 years old could be married by a license granted "by the Chief Minister under s. 21(2)". In any event, s. 10 concerns only marriages solemnised in Malaysia and not marriages solemnised
g overseas which may permit marriages between minors. Whereas, it is my considered view that the word "and" interposed between the words "was a minor" and "never married" in s. 7(3B)(b) would entail same to be read disjunctively, to mean that before a claim for bereavement by the parents can be allowed, two ingredients would need to be proved namely, that the deceased is a minor and that he was never married. Only upon being satisfied as to the marital status of the deceased can the trial Court allow such a claim.
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I therefore upheld the decision of learned Sessions Court Judge on this point and dismissed the appellant's appeal on the claim for breavement.

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